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STATE OF OHIO
-LO%MENT COMPELNSATION
RFNIEF-7 COMMISSION
145 SOUTH FRONT STREET P-0, BOX 182299
COLTXBUS, OHIO, 43218-2299

RO1-16170-0000
Us IN'TRAsTArE

DECISION

In re claim of:

APPELLAXT

Claimant Representative:

JILL LAKG
LEGAL AID SOCIETY OF CrJ~ELA%D
3408 LORAIN AVEZNUz
CLEVELAND, OH 44113

Social Security No. a-\
L-0. 601-0

Zmployer :
GEORGIA PACIFIC CORP
ATTN U C WAGER QA029-6
? 0 BOX 740075
ATLJQVTA, GA 30374-0075

UC0 No. -0173731000-

Employer:
GEORGIA PACIFiC CORP
4600 BROOKPARK RD
CLEVEW, OE: 44134

UC0 No. -0173731000-

CASE HISTORY

On September 18, 2001, the claimant filed atl Application for Determination of Benefi: Rights e applicatiø= was allowed with a benefit year beginning September 16, 2001. The claimant filed a first claim for the week ending September 22, 2001.

A Determination of Benefits, issued October 12, 2001, held that the claimant was discharged by Georgia Pacific Corporarion for just cause in connection with work. The claimznt's benefit rights were suspended until the claimant works in six weeks of covered emplomez& and earns at least \$1,0'L4,00. The claim for the week ending September 22, 2001, was disallowed.

On October 22, 2001, the claimant filed an apaeal from the Determininstion of Ber,efits. A Director's Redetermination,- issued Xovember 1, 2001, affirmed the determination.



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On November 19, 2001, the claimant appealed the Director's Redetermination. On November 21, 2001, the Ohio Department of Job and Family Services transferred jurisdiction to the Unemployment Compensation Review Commission.

On February 1, 2001, a hearing was held in Cleveland, Ohio, before Hearing Officer, Barbara A. Thompson. Claimant appeared and was represented by Jill Lang, Attorney at Law, for Legal Aid Society of Cleveland. Georgia Pacific Corporation was represented by Mary Seris, with Edward Piazek, as a witness.

FINDINGS OF FACT

Prior to filing his application for determination of benefit rights, claimant was last employed by Georgia Pacific Corporation from October 1, 1996 through September 17, 2001, as an Assistant Machine Operator.

According to the policy of Georgia Pacific Corporation, fighting or horseplay is prohibited and a terminable infraction.

On September 14, 2001, claimant was at work. The other employee took a commercial hose, which he was using in the performance of his duties, and sprayed the claimant's face. Claimant, although he could have retreated, then went to the employee and punched him in the face, knocking him to the floor. The other employee received medical treatment,

The other employee received a five (5) day suspension from work because there were no witnesses who could testify that they saw him spray the claimant. A few witnesses observed claimant hitting the employee. Two of the witnesses observed that claimant was soaking wet.

ISSUE

Was claimant discharged from Georgia Pacific Corporation without just cause in connection with work?



LAW

&I individual is not disqualified for benefits if the individual was discharged without just cause in connection with work. **Section 4141.29, (II) (2) (a) O.R.C.**

REASONXNS

Claimant violated company policy. Claimant hit another employee and the employee required medical attention,. Claimant could have retreated from the incident; however, he did not.

According to **the** company policy, horseplay, as well as fighting, is grounds for automatic termination from employment. The other employee was not discharged, although there is circumstantial evidence that he sprayed claimant.

One of the issues before the Hearing Officer is the credibility of the witnesses, as there is conflict in the sworn testimony of the parties.

Claimant continues to assert that the spraying, with a certain hose, dazed him, and he felt an urge to defend himself. Claimant further continues to assert that there is inconsistency in the application of the employer's rules. Claimant continues to assert that the company had sufficient evidence to see that claimant was soaking wet and that the other employee should have been discharged.

Georgia Pacific Corporation continues to assert that **no one saw the other** employee spray the claimant; however, one of the witnesses does admit that the hose was in the area of the other employee and that he probably sprayed claimant.

The Review Commission has long taken the position that discipline must be meted out fairly and consistently to all employees.

The weight of the evidence supports claimant's position.

Claimant was discharged by Georgia Pacific Corporation without just cause in connection, with work.



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DECISION

The Director's Redetermination, issued November 1, 2001, is reversed.

The claimant was discharged by Georgia Pacific Corporation -without just cause in connection with work. The suspension of benefits is removed. The claim for the week ending September 22, 2001, is allowed.

The Ohio Department of Job and Family Services will adjust charges to the account of Georgia Pacific Corporation in accordance with this decision.

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Barbara A. Thompson, Hearing Officer

APPEAL RIGHTS

This decision is mailed on February 5, 2002.

A Request for Review before the U.C. Review Commission, may be filed by any interested party within twenty-one calendar days after this decision is mailed. Said twenty-one day period is calculated to end on February 26, 2002.

The Request for Review must be in writing and signed by the appealing party or an authorized representative. The request should set forth the reasons why the appellant disagrees with the hearing officer's decision. You may file your request in person at any Ohio Department of Job and Family Services office, mail your request to the U.C. Review Commission, 145 South Front Street, P.O. Box 182299, Columbus, Ohio 43218-2299, or fax your request to (614) 752-8862.